

Exhibit A

D. Costs, other than attorney fees, expected to be incurred by a conflict attorney which exceed \$200, will be pre-approved by the Conflict Coordinator.

E. The Chief Public Defender, Contracts Manager, Training Coordinator, and Conflict Coordinator will confer with each other about the availability of experts or other options relating to costs in cases without reference to the specifics of any case.

IV. ADMINISTRATION OF DEFENDER SERVICES

1. Attorney-Client Communication:

Goal: Regular and confidential communication between attorneys and clients is a necessary part of effective representation.

A. Effective representation of an accused client requires prompt and effective communication with the client. This communication includes personal and telephone contacts with a client in custody.

B. To ensure the privacy essential for confidential communication between counsel, public defender staff, and client, adequate facilities should be available for private discussions in jails, prisons, courthouses, healthcare facilities, and other places where accused clients must confer with counsel.

C. Personnel of jails, prisons, custodial institutions, and healthcare facilities should be prohibited from examining or otherwise interfering with any communication or correspondence between client, defense counsel, or public defender staff relating to legal action arising out of charges or incarceration.

D. Each jail or detention facility should make available an unmonitored and unrecorded toll-free telephone for purposes of allowing indigent clients to contact and confer with counsel and public defender staff on at least a daily basis. Counsel should be allowed personal contact with an incarcerated client at any time upon counsel's request.

E. A public defender office policy, contract for indigent defense services, and individual assignments of counsel shall include a requirement that a client in custody must speak with counsel either in person or by telephone at least weekly, unless otherwise agreed between the client and counsel.

F. The Regional Public Defender Offices shall take appropriate action to ensure these standards are implemented.

2. Delivery of Services:

Goal: Counsel shall strive for excellence in the representation of the indigent client.

A. Counsel representing indigent clients should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of counsel for specific cases should not be made by the judiciary, but should be arranged for by the administrators of the public defender office, assigned counsel, and contract-for-service programs.

B. The Chief Public Defender and his or her staff should be compensated at a rate commensurate with their experience and skill sufficient to attract career personnel and comparable to that provided for their counterparts in prosecutorial offices.

C. The Office of the State Public Defender shall award contracts for indigent legal services only after determining that counsel or the firm chosen can meet the standards set forth herein. Under no circumstances should a contract be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned. Counsel or firms bidding for contracts must demonstrate their ability to meet these standards. While the Office of the State Public Defender may, in the sole discretion of the Chief Public Defender, choose to consult with judges, the Attorney General's Office, city attorneys, county prosecutors, and law enforcement officers in deciding who to select as attorneys to provide services as assigned counsel, those parties may neither select nor prohibit the selection of any counsel or law firm.

D. Contracts for public legal representation services should be awarded for at least one-year terms. Removal of the contracting counsel or firm before the agreed term should be for good cause only. The contract shall define "good cause" as "a failure by contracting counsel to comply with the terms of the contract that impairs the delivery of services to clients, or a willful disregard by contracting counsel of the rights and best interest of clients."

E. Contracts for services must be awarded on a competitive process and must involve the following considerations:

- a. The categories of cases in which contracting counsel is to provide services;
- b. The term of the contract and the responsibility of contracting counsel for completion of cases undertaken within the contract term;
- c. Identification of counsel who will perform legal representation under the contract and prohibition of substitution of counsel without prior approval;
- d. Allowable representation workloads for individual counsel, including the amount of private practice engaged in outside the contract, and measures to address excessive workloads, consistent with these Standards;
- e. Minimum levels of experience and specific qualification standards for contracting counsel, including special provisions for complex matters, compliance with standards established by the Montana Supreme Court in capital cases, and compliance with the standards of the Montana Public Defender Commission for capital cases;

- f. A policy for conflict of interest cases and the provision of funds outside of the contract to compensate conflict counsel for fees and expenses;
 - g. Reasonable compensation levels consistent with these standards and a designated method of payment;
 - h. Sufficient support services and provision for reasonable expenses, subject to prior approval as outlined by the Office of the State Public Defender in its policy manual, for paralegal and investigative services, expert witnesses, and other litigation costs to be paid on an "as needed" basis in addition to the contract compensation;
 - i. A process for the professional development of assigned counsel, including supervision, evaluation, and training in accordance with standards set by the Montana Public Defender Commission;
 - j. Protection of client confidences, attorney-client information, and work product related to contract cases, except under a legal court order to divulge, or after receiving a voluntary, knowing, and intelligent waiver from the client in the case, or to a subsequent attorney in the case;
 - k. A system of case management and reporting as required by the Office of the State Public Defender;
 - l. The grounds for termination of the contract by the parties;
 - m. A requirement that contracting counsel provide for retention of client files in a manner that affords protection of the client's confidentiality interest for three years from the date of conclusion of the matter in the trial court, or until the client is no longer subject to State supervision, whichever is longer.
- F. Determination of indigence after initial representation by retained counsel.
- a. It is of primary importance to the members of the bar and to the public that a lawyer who undertakes representation of a client in criminal proceedings continues to represent the client at least through the trial stage of the proceedings, unless the continued representation would result in the violation of a disciplinary rule. Continuity of counsel in proceedings should be mandated in order to protect the rights of the client by avoiding, wherever possible, the adverse effect and possible prejudice to the client caused by an attorney's withdrawal.
 - b. The Office of the State Public Defender shall assign counsel to a client initially represented by retained counsel only after a written motion has been made by retained counsel.
 - c. If retained counsel has filed a written motion for a determination of indigence and to withdraw from the case no later than sixty days after counsel has either filed a notice of appearance or actually made a court appearance on behalf of the client, and not less than thirty days prior to trial or any evidentiary hearing, OPD, subject to a determination of indigence, shall assign new counsel to the client.
 - d. When retained counsel makes a written motion for a determination of the client's indigence at a time other than that set forth in paragraph (c), above, and the client meets the financial eligibility requirements for

indigent services, OPD shall assign the moving counsel to provide legal services for the client.

- e. If, upon motion by the Regional Public Defender's Office, a court determines that the foregoing practice has led to abuse by an attorney who has in the past repeatedly requested a determination of his client's indigence after undertaking representation as retained counsel, the court may order continued representation by that attorney without assignment by the public defender's office or cost to the public.
- f. If contract counsel becomes aware of a client, who has been assigned to a contract attorney by OPD, having or acquiring sufficient funds to hire counsel, the contract counsel shall contact the Regional Deputy Public Defender and request a redetermination of indigency.
- g. Contract counsel is prohibited from taking any fee from a client assigned by OPD.

G. The Chief Public Defender and Regional Public Defenders shall provide for contract oversight and enforcement to assure compliance with these Standards and applicable Montana statutes. For conflict of interest cases, the Conflicts Coordinator shall provide such oversight.

3. Accounting and Billing System:

Goal: A transparent standardized accounting and billing system that maintains client confidentiality is the best way to achieve financial accountability.

4. Performance Evaluations

- A. Each attorney employed as a public defender shall have their work performance evaluated on a yearly basis.
- B. The evaluation will be conducted by a combination of the Chief Public Defender, and the Training Coordinator, and/or the Regional Deputy Public Defender in the region in which the public defender is employed and/or the Managing Attorney in the office in which the public defender is employed.
- C. The performance evaluation shall be done on forms approved by the Office of the State Public Defender.
- D. In conducting the evaluation, the evaluators may obtain information from a variety sources including clients, other public defenders, office staff, judicial personnel and faculty from trainings the public defender has attended.
- E. The public defender shall be interviewed during the evaluation process.
- F. At the conclusion of the process, the evaluation will be reviewed and discussed with the public defender.

G. If the public defender disagrees with the results of the evaluation the public defender has the right to submit a written rebuttal which shall be attached to the evaluation. A permanent employee may file a grievance as provided by state law.

H. Performance evaluations shall remain in the personnel file for the duration of employment and in conformity with state policy.

5. Proficiency Determination for Contract Attorneys

A. Each private attorney providing contract/conflict services to the Montana Office of the State Public Defender shall undergo a proficiency determination biennially.

B. The proficiency determination will be conducted by the OPD Contracts Manager or the Conflict Coordinator. The Chief Public Defender, OPD Training Coordinator, and the Regional Deputy Public Defenders may assist in the proficiency determination.

C. In conducting the determination, the contract attorney will be observed in court and information may be obtained from clients, the Regional Deputy Public Defender in any region in which the contract attorney renders public defender services, judicial personnel and faculty from training the contract attorney attends during the preceding contract year.

D. The contract attorney will meet with OPD during the determination process.

E. The contract attorney will provide OPD with a copy of the CLE affidavit filed annually with the State Bar. A new "experience survey" will be submitted if the contract attorney wishes to provide services in a new practice area.

F. Upon the completion of the determination process, OPD shall certify the contract attorney's proficiency within all applicable areas of public defense law.

G. A proficiency certification will be signed by the contract attorney and the Contracts Manager or Conflict Coordinator.

H. If the contract attorney is determined to not be proficient in an area of public defense law, OPD will recommend remedial steps to obtain proficiency. The contract attorney may file an objection with the OPD and meet with the Chief Public Defender.

V. CASELOADS

Goal: Caseloads must not be oppressive, and should match counsel's experience, training, and expertise.

1. Governing Principle:

Counsel caseloads should be governed by the following:

A. Individual Public Defender. Caseload levels are the single biggest predictor of the quality of public defense representation. Not even the most able and industrious lawyers can provide effective representation when their work loads are unmanageable. Whenever a salaried or contracting counsel determines, in the exercise of counsel's best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases, will lead to furnishing representation lacking in quality or the breach of professional obligations, the attorney is required to inform the Regional Public Defender's Office, who shall inform the Chief Public Defender. The Chief Defender will then inform the Montana Public Defender Commission.

B. Chief Public Defender. The caseload of public defense attorneys should allow each lawyer to give each client the time and effort necessary to ensure effective representation. Whenever the Chief Public Defender determines, in the exercise of his or her best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will, by reason of their excessive size and complexity, interfere with the rendering of quality representation, or the breach of professional obligations, the Chief Public Defender is required to inform the Montana Public Defender Commission, which in turn will inform the Law and Justice Interim Committee, the Legislative Finance Committee, and the Office of Budget and Program Planning and shall take all reasonable steps to alleviate the situation.

2. Caseload Evaluation:

A. In attempting to establish caseload standards for public defender offices, the Commission encountered a number of difficulties. In considering maximum caseload standards, it is inherently difficult to compare the work required for different types of cases. Each case is so individually different, that it is nearly impossible to set rigid numerical objectives. Also, physical and geographical factors can influence an office's caseload capacity as well. An office which from a single location in a geographically large jurisdictional area is required to serve numerous distant scattered courts has a lower caseload capacity per attorney than an office in a geographically small jurisdiction or one in which all of the courts, the jail, and the public defender's office are housed in a single building.

B. The caseload of counsel should allow him or her to give each client the time and effort necessary to ensure effective representation. Regional public defender offices, contract counsel, and assigned counsel should not accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. Caseload limits should be determined by the number and type of cases being accepted, and on the local prosecutors charging and plea-bargaining practices. It is

the Commission's intention in considering caseloads, that the caseload of each counsel shall be considered by the criteria of reasonableness. One measure of the reasonableness of an attorney's caseload is to assess the amount of time an attorney would spend on a case under these standards. An accepted national standard for public defender attorneys is to work approximately 2,000 hours per year. One serious case requiring 50-100 hours to bring to trial, limits the time an attorney can devote to his or her remaining cases. In setting these maximum caseload levels, it is the Commission's intent that the maximum caseload levels of each attorney be judged by considering the complexity of the case, trial preparation, and travel. In other words, if a public defender works diligently and efficiently as required by the employment agreements, then the number of cases he or she is able to handle would be considered reasonable. Conversely, to require a public defender attorney to work diligently and efficiently more than the time required by the employment agreements would be considered an unreasonable caseload.

C. A "case" consists of all charges against a single defendant arising out of a single event, transaction, or occurrence, or all charges arising out of a series of related incidents charged in a single information or complaint (including collateral matters such as probation violations which do not require a separate dispositional hearing) and should be counted and reported as one case. If a separate probation revocation hearing is required, the probation hearing shall be counted as a separate misdemeanor case. If two or more defendants are charged in a single information or complaint, the charges against each defendant should be counted and reported as separate cases.

D. The Montana Public Defender Commission intends to review numerical caseload standards from time to time. These suggested caseload numbers shall be posted on the Public Defender Web site and may be modified from time to time.

E. The standard applicable to each category of cases is intended to be a suggestion only and is not intended to be a maximum limitation on the average current caseloads of each attorney employed as a public defender. Based on the standard of reasonableness, the numerical limits found on the Website may have to be adjusted in rural areas where attorneys may travel great distances between courts or upon the complexity of each case.

VI. QUALIFICATIONS AND DUTIES OF COUNSEL

Goal: Counsel must meet these minimum standards before accepting a case. In order to provide effective representation, counsel must engage in regular and ongoing training.

A. In order to assure that clients receive the effective assistance of counsel to which they are constitutionally and statutorily entitled, counsel providing public legal representation should meet the following minimum professional qualifications:

- a. Satisfy the minimum requirements for practicing law in Montana as determined by the Montana Supreme Court;

Exhibit B

Office of the State Public Defender

Administrative Policies

Subject: Caseload Management	Policy No.: 117
Title: 47	Pages: 2
Section: 1-105	Last Review Date: 7/11/12
Effective Date: 10-1-07	Revision Date: 7/23/12

1.0 POLICY

- 1.1 A mission of the Office of the State Public Defender (OPD) is to insure that no attorney doing public defender work, either as an employee or as a contract attorney, has a workload of such an amount that clients are not being adequately represented and/or the wellbeing of the attorney is jeopardized.
- 1.2 The regional deputy public defenders (RDPDs) and the managing attorneys in each public defender office are responsible for managing the workloads of the attorneys they supervise.
- 1.3 The RDPD will follow the below procedures upon receipt of a Notice of Appointment of the Office of the State Public Defender, or receipt of a case in any other fashion.

2.0 PROCEDURE

2.1 Staff Attorneys

- 2.1.1 The RDPD or the managing attorney in a public defender office will assign the case to an attorney in the office.
- 2.1.2 The RDPD will prepare and file a notice of who will be the attorney of record with the court.
- 2.1.3 The RDPD and managing attorney will discuss the case weighting system and workload at least monthly with each employed public defender they supervise. When a public defender expresses a problem with his/her workload, the supervising attorney shall work with the public defender to alleviate the workload. The supervising attorney shall consider doing any of the following:
 - 2.1.3.1 discontinue assigning cases to the public defender for a specified time;
 - 2.1.3.2 discontinue assigning specific kinds of cases to the public defender for a specified time;
 - 2.1.3.3 assign other public defenders to assist on particular cases;
 - 2.1.3.4 assign extra staff or an investigator to assist on particular cases;
 - 2.1.3.5 reassign particular cases; and/or
 - 2.1.3.6 negotiate time off work for the public defender.
- 2.1.4 The supervising attorney shall consider any other solutions that the public defender suffering excessive caseload may have.
- 2.1.5 The RDPDs and managing attorneys shall keep the Chief Public Defender fully informed about workload problems expressed by the

attorneys they manage. The Chief Public Defender shall report to the Public Defender Commission as workload problems arise.

2.2 Contract Attorneys

- 2.2.1 The RDPD will determine which contract attorneys are willing to be assigned to the case.
- 2.2.2 The RDPD will review the number of open cases that each contract public defender is carrying to ensure effective assistance of counsel, and will, at the time any new case is assigned, ascertain that the contract attorney has a workload that allows sufficient time to be devoted to the new case and client.
- 2.2.3 When a contract attorney's workload will not allow time to adequately represent a client, the client's case shall be assigned to another contract public defender. If another local contract attorney cannot be found, the Contract Manager shall be so advised and assist in locating counsel for the client.
- 2.2.4 The RDPD will prepare and file a notice of who will be the attorney of record with the court.
- 2.2.5 The RDPD will send a copy of the notice to the contract attorney who has agreed to handle the case.

3.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Exhibit C



Brian Schweitzer
Governor

OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

Chief Public Defender
William Hooks

CASE WEIGHT SYSTEM - RULES

Revised June 2013 by the Caseload Committee

BEST PRACTICES: (on how to administer and use this system)

Step 1- VALUE THE CASE

(assign case hours to each case when assigned – this means DAILY, as the cases come in, then write the hours on the appointment sheet. Likewise, the hours assigned should be entered into Justware)

Step 2- DAILY TRACKING

(this system is designed to help evenly distribute cases among attorneys and to monitor how many cases each attorney receives each month)
(We are currently using Justware to generate monthly reports)

Step 3- GENERATE MONTHLY JUSTWARE REPORT

(print a Justware Report for each attorney at the end of each month)

Step 4- ATTORNEY REVIEWS MONTHLY JUSTWARE REPORT

(at the close of the month distribute the reports to the attorneys)
(if there are questions, concerns, or changes, the attorney can write in the comment section on the form and talk to the manager about changes)

Step 6- AFTER ADJUSTMENTS, ATTORNEY AND MANAGER SIGN AND DATE MONTHLY REPORT, REPORT IS SENT TO CENTRAL OFFICE

Step 1 – Value the Case

1. The Regional Deputy Public Defender and/or Managing Attorney will assign and track cases by attorney for the office or region. If the Regional Deputy Public Defender or Managing Attorney is absent they will appoint a backup person who will be an attorney to assign and track cases. Every region will provide the Central Office with a list of those individuals that are approved to assign and track cases including all backup personnel. (see page 5-8 for specifics on values)

Step 2 – Daily Tracking

2. Cases will be assigned DAILY and entered into Justware DAILY. This information will be reported to the Central Office within 10 calendar days after the end of each month.

3. There will be a separate Justware Form for each attorney.

4. This case weighting system is designed to monitor case assignments rather than open cases therefore, there is no incentive for a staff attorney to keep cases open.

5. One case is any number of tickets or charges an individual received in a specific incident and assigned to one jurisdiction for adjudication (i.e. Traffic stop results in a speeding ticket, criminal distribution of dangerous drugs and possession – if litigated in the same court – all one case).

6. **When an attorney's monthly hours reach 125, the Regional Manager or Managing Attorney must meet with the staff attorney to discuss the attorney's caseload.**

7. This tool is not a performance measure but is simply used to assess whether resources are being properly distributed and help assure that the agency is not exceeding ethical caseload limits.

Step 3 – Step 6
Generate, Attach, Review, Sign and Date

8. At the close of each month, print off the Justware Report and distribute to every attorney. The attorney then has a chance to review the Justware Report for errors, questions, concerns, and can write their comments on the form. Once the review is completed and adjustments are made, if any, both the attorney and manager sign the Justware Report.
9. The Justware Report must be sent to the Central Office within 10 calendar days after the end of each month.

Summary Report (generated by Central Office)

10. The Justware Report will be used by Central Office to generate a summary form for each attorney. The summary form will have 12 months for each attorney and a sum of the activity for the 12 month period at the bottom of each column.
11. On the summary form for a new attorney, any month that does not have “actual information” for case assignments will have 125 hours in place of the non-existent actual information. Therefore each attorney will begin with 1500 hours (12 months times 125 hours = 1500).
12. Actual monthly hours will replace the 125 hour place holder and become part of the calculation of total annual hours.
13. This is a “rolling month” process so the most recent actual information replaces the old information and the total is recalculated.
14. New hires: Central Office will backfill the summary report with the total number of hours transferred to the attorney at 125 hours per month beginning with the current month until all cases that have been transferred are accounted for. Backfill to fill out the year with 125.

Special Circumstances:

15. Warrants: If a case goes to warrant status, make no adjustments.

16. Similarly, if a case comes back from warrant status to active, make no adjustments unless the case has been re-assigned to another attorney. (Generally, these cases will most likely return to the attorney's caseload within the year.)

17. Conflicts: If a case is conflicted out of the office after it has been assigned, subtract the appropriate hours from the attorney to whom it was assigned. (Management retains discretion to leave the hours on the original attorney's count if the case goes to conflict at a late stage after the attorney has worked the case for some time or if the attorney has expended significant hours.)

Adjustments should be made in the month in which the transfer takes place, regardless of when the appointment was made.

18. Co-counsel: If an attorney is full co-counsel, give that attorney full hours. If the attorney is a trial-only co-counsel, give the attorney one-half of the allotted hours.

19. When a case is transferred from one attorney to another the case hours moves with the case (subtract from the original attorney, add to the new attorney). Adjustments should be made in the month in which the transfer takes place.

CASE WEIGHT HOURS

Misdemeanor (including Juvenile cases):

2.5 hours

-Fugitive / Out of County warrants

3 hours

-ALL Traffic Offenses (Title 61) (chapters 3,5, 6, 7, 8 9, 11, 13)
Except (DUI / PerSe – 61-8-401 and 61-8-406)

-Crimes (ONLY these three): Disorderly Conduct 45-8-101
Obstructing 45-7-302
Minor in Possession 45-5-624

-All City Ordinance Violations

7 hours

-DUI / PerSe (Title 61) (DUI 61-8-401 and PerSe 61-8-406)

-Crimes (ALL Title 45) (chapters 2, 5, 6, 7, 8, 9, 10)
Except Disorderly Conduct 45-8-101
Obstructing 45-7-302
Minor in Possession 45-5-624

10 hours

-misd sex crime

Add 5 hours to the month when a jury trial occurs.

Add 5 hours to the total for appeals from Justice/Municipal/City court upon appeal

Add 5 hours to the hours assigned if the case is outside of the assigned region).

(Example: DUI (misd) charged in Kalispell, but the attorney comes from Missoula
= dui (7) + 5 for travel, assign 12 hours)

Add 7 hours is there are 5 or more charges in one case.

Add 20 hours to the month for those who practice in courts located outside
of the city where their office is located.

Assign the hours based on the highest crime charged, then no hours for the other charges

EXAMPLES

1- Disorderly, DUI, and open container = 7 hours

(because DUI is worth the most, don't count the others)

2- No insurance, obstructing, and driving while suspended = 3 hours

(that's the highest unit for any one of them)

3- No insurance, obstructing, no DL, speeding, minor in possession,
which goes to jury trial = 12 hours

(start with 3 hours since all are in the 3 hour category, then, because there are 5
or more charges add 7 hours + 5 hours because a jury trial occurred)

Felony (including Juvenile cases):

<u>2.5 hours</u>	-Fugitive / Out of County warrants
<u>7 hours</u>	-Petition To Revoke
<u>10 hours</u>	-Property Crimes (45-6-101 – 45-6-341) -Offenses Against Public Administration (45-7-101 – 45-7-501) -Offenses Against Public Order (45-8-103 – 45-8-408)
<u>15 hours</u>	-Dangerous Drugs (45-9-101 – 45-9-132) - <u>Felony</u> DUI (61-8-401, 61-8-406)
<u>20 hours</u>	-Felony theft -Offenses Against the Person (45-5-201 – 45-5-401 and 45-5-601 - 637) Except Felony Sex and Homicide charges
<u>50 hours</u>	-Felony Sex Offense (45-5-501 – 45-5-512)
<u>100 hours</u>	-Homicide (45-5-101 – 45-5-106)

Add 5 hours to the hours assigned if there are 3 or 4 charges in the case

Add 5 hours to the hours assigned if the case is outside of the assigned region).

(Example: Kidnapping charged in Kalispell, but the attorney comes from Missoula – person crime + 5 hours for travel, assign 25 hours.)

Add 10 hours to the month when a jury trial occurs

Add 10 hours to the hours assigned if there are 5 or more charges in the case

Add 20 hours to the month for those who practice in courts located outside of the city where their office is located.

Inchoate Offenses (**Solicitation, Conspiracy, and Attempt**), assign hours according to the underlying crime.

Example: attempted robbery, assign hours for robbery, 45-5-401 = 20 hours

Assign the hours based on the highest crime charged, then look at the number of charges for extra points:

EXAMPLES

- 1- Possession of Dangerous Drugs, Stalking = 20 hours
(since stalking is worth the most, don't assign hours for PODD)
- 2- Criminal Mischief, Arson, Burglary = 15 hours
(even though all are in the 10 hour category, add 5 hours since there are THREE charges)
- 3- Attempted negligent homicide = 100 hours
(even though its attempted homicide, look at underlying charge of homicide)

Civil:

2.5 hours

-DI (Involuntary Commitment)

Add 5 hours if goes to contested judge hearing (total possible 7.5 hours)

Add 10 hours if goes to contested jury trial (total possible 12.5 hours)

4 hours

-DD (Developmentally Disabled)

5 hours

-DG (Guardianship)

Add 5 hours if the case goes to final contested hearing
(total possible 10 hours)

20 hours

-DN (Dependent Neglect)

Add 10 hours if goes to contested termination (total possible 30 hours)

Note: DN case weighting is based upon the cause number of the parent(s), not the number of children, and includes termination proceedings, so trial level preparation is necessary. The value for a DN case is only placed in one of the DN cases that are all related to the same filings against the one client. The value should be placed in the first case the office receives or in the lowest cause number associated with the one client. The case weight value should only be counted once regardless of the number of children

Add 5 hours to the hours assigned if the case is outside of the assigned region.

Add 20 hours to the month for those who practice in courts located outside
of the city where their office is located.

DUI / Treatment Court:

Add 20 hours every month for each treatment court the attorney is assigned to.

Each treatment court is separate and distinct, unless they are consolidated for the purpose of staffing, hearing and case work. For example, some courts have separate official names, but don't require separate attorney time because all court and case work is done at the same time.

Jail Run / Initial Appearances:

Add 70 hours every month for the attorney who is the "designated daily jail attorney" for their office (applies to Regions 1, 2, 3, 4, 5, 8 and 9) This value applies when there is only ONE person doing the jail run and initial appearances for the entire office. This does not apply in offices that use a rotation to cover the jail run and initial appearances.

Exhibit D

Affidavits of
Dave Burleigh,
Jennifer C. Kaleczyc,
Jonathan King, and
Brady Minow Smith

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IN THE HELENA MUNICIPAL COURT, CITY OF HELENA
BEFORE ROBERT WOOD, MUNICIPAL COURT JUDGE

THE CITY OF HELENA,)	
)	
Plaintiff,)	Cause No. 2013-NT-5172
)	
-vs-)	AFFIDAVIT OF
)	DAVE BURLEIGH
MARK ALLEN LEE,)	
)	
Defendant.)	
)	

COMES NOW Dave Burleigh, the affiant, who swears now as follows:

- 1) I am an attorney for the Office of the Public Defender (OPD) which is relevant to the above-captioned case.
- 2) I am over 18 years of age and reside in Lewis and Clark County, Montana.
- 3) I have been an attorney with the OPD for over five years.
- 4) I frequently have over 150 cases open at one time.
- 5) Periodically, I have had over 200 cases open at one time.

1 6) I represent or have represented clients in all levels of crimes, from driving offenses to
2 attempted deliberate homicide, as well as frequent civil commitments, and constantly
3 have five to twenty dependent neglect cases open.

4 7) Because of our case loads, I feel I am not able to represent my clients as vigorously as I
5 might if I had more time to work the cases.

6 8) I often do not have time to contact witnesses and law enforcement officers to discuss a
7 case with them before trial.

8 9) I usually do not have time to independently investigate crime scenes prior to trial.

9 10) I often do not have time to research and draft motions to suppress evidence or litigate
10 matters which I feel are border-line. I try to find time to litigate suppression issues I
11 feel I will win.

12 11) I do not have time to sit with my clients during pre-sentence investigation interviews.

13 12) I feel the quality of my representation for most of my individual clients is lower than
14 my ability to practice, simply because of the high case load.

15 13) I feel many clients are unable to be comfortable in my representation of them because I
16 am unable to spend an adequate amount of time on their case.

17 14) There have been some cases where the outcome has been less than optimal because I
18 was unable to spend enough time working on the case.

19 Further this deponent sayeth not.

20 Pursuant to § 1-6-105(1)(a), MCA, I declare under penalty of perjury that the foregoing
21 is true and correct.

22
23 Dated this 4 day of September, 2013

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Dave Burleigh

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7 IN THE HELENA MUNICIPAL COURT, CITY OF HELENA
8 BEFORE ROBERT WOOD, MUNICIPAL COURT JUDGE

9 THE CITY OF HELENA,

10 Plaintiff,

11 -vs-

12 MARK ALLEN LEE,

13 Defendant.
14
15

Cause No. 2013-NT-5172

**AFFIDAVIT OF
JENNIFER C. KALECZYC**

16 I, Jennifer C. Kaleczyc, a person of lawful age, declare the following:

17 1. I worked as an Assistant Public Defender for the Office of the Public Defender
18 (“OPD”) from July 2007 to May 2012. In May of 2012, I became the regional deputy public
19 defender for Region Four. Region Four includes Lewis and Clark, Broadwater, and Jefferson
20 Counties. As the Regional Deputy Public Defender, I supervise ten attorneys, one investigator,
21 and four support staff.
22

23 2. I am responsible for assigning cases to attorneys. In doing so, I consider factors
24 including but not limited to the attorney’s experience and current caseload. With few
25 exceptions, every month caseloads of Region Four attorneys exceed recommended OPD

1 standards for effective and ethical representation of indigent clients. Many months, several
2 attorneys are assigned more than twice as many cases than that suggested by OPD standards.

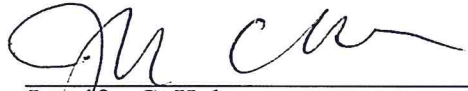
3 3. I observe that attorneys must choose to work on some cases at the expense of others.

4 4. In addition to high caseloads, Region Four has experienced high turnover. Six staff
5 attorneys, three office managers, one receptionist, and one investigator left Region Four for
6 new positions outside the public defender system.

7 5. I have insufficient time to adequately train and mentor attorneys. Typically, new
8 attorneys spend approximately only one week observing other attorneys before I assign cases to
9 them.
10

11 Pursuant to § 1-6-105(1)(a), MCA, I declare under penalty of perjury that the foregoing
12 is true and correct.

13 Dated this 4th day of September, 2013.
14

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16 Jennifer C. Kaleczyc
17 Regional Deputy Public Defender
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7 IN THE HELENA MUNICIPAL COURT, CITY OF HELENA
8 BEFORE ROBERT WOOD, MUNICIPAL COURT JUDGE

9 THE CITY OF HELENA,

10 Plaintiff,

11 -vs-

12 MARK ALLEN LEE,

13 Defendant.
14
15

Cause No. 2013-NT-5172

**AFFIDAVIT OF
JONATHAN KING**

16 1. I graduated from law school in 2008. Since that time, I have held four different
17 attorney jobs: (1) associate attorney with Gibson, Dunn & Crutcher, (2) public defender with
18 the Massachusetts Committee for Public Counsel Services, (3) appellate defender with
19 Montana's Office of the Appellate Defender, and (4) public defender with the Helena office of
20 Montana's Office of the State Public Defender, where I have worked since May 2013.

22 2. As a public defender in the Helena office, I represent clients charged with
23 misdemeanors in the county justice court and the city municipal court. Only four months in, my
24 active caseload has already reached 137 clients. By contrast, in Massachusetts, I averaged about
25 35 open cases at a time, with a range from the high 20s to the high 40s.

1 3. Because of my high caseload—which isn't as high as the caseloads of other public
2 defenders practicing in the same courts—I'm unable to provide my clients with anywhere near
3 the level of representation I provided to my Massachusetts clients. For example, as a public
4 defender in Massachusetts, I regularly researched potential pre-trial motions, sometimes filing a
5 motion and other times deciding not to if the research showed a motion would be meritless. In
6 Montana, however, because of my caseload, I simply don't have time to do research.
7 Consequently, I won't file a pre-trial motion unless it requires little or no research.
8

9 4. Similarly, I don't receive nearly as much supervision here as I did in Massachusetts.
10 In Massachusetts, I met with my supervising attorney for "strategy sessions" every other week.
11 During these sessions, my supervisor reviewed my open cases and offered ideas on potential
12 motions and trial preparation. As a young attorney, I learned a lot during these meetings, and
13 my clients unquestionably benefitted from what I learned. In Montana, by contrast, neither I
14 nor my supervisor has time to meet and strategize about my open cases.
15

16 Pursuant to § 1-6-105(1)(a), MCA, I declare under penalty of perjury that the foregoing
17 is true and correct.

18 Dated this 4th day of September, 2013.

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20 
21 Jonathan King
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25

THE CITY OF HELENA,

Cause No. 2013-NT-5172

-VS-

MARK ALLEN LEE,

Defendant.

I, Brady Minow Smith, a person of lawful age, declare the following:

1. I am a licensed attorney in good standing in the State of Montana and an assistant public defender employed by the Office of the State Public Defender (“OPD”).

2. I have been a licensed attorney since October 1, 2012.

3. I have been working for the OPD since October 1, 2012.

4. I graduated from law school in May, 2012.

5. I have an unmanageable caseload. I routinely have between 100-200 cases at any given time.

1 6. I practice primarily in Municipal Court, but I also take some felony cases, some
2 youth court cases, some dependent neglect cases, and often fill in on involuntary commitment
3 cases.

4 7. Because of the size of my caseload, I am often unable to respond to client phone
5 calls in a timely matter. Sometimes clients call me several times before I am able to call them
6 back.

7 8. Because of the size of my caseload, I do not have enough time to spend on each
8 case going through all the discovery and spotting any issues. I believe I sometimes miss issues
9 because of the lack of time to go over everything adequately.

10 9. I am often unable to call clients and schedule meetings before their omnibus
11 hearings. If I do not call my clients, they will rarely make appointments on their own. This
12 means that I routinely meet clients and give advice for the omnibus hearing at the Courthouse
13 minutes before the hearing begins.

14 10. I rarely meet with clients in person more than once before we do a change of
15 plea or sometimes even before a bench trial.

16 11. When I first started this job, before my caseload grew to an unmanageable size, I
17 often met with clients once when I was first assigned the case and then again once I received
18 discovery.

19 11. I have only been practicing law for less than a year and because of my lack of
20 experience, even 100 cases is too much for me to adequately manage.

21 12. When I began working for the OPD, I spent my first week observing. The
22 second week was spent at the OPD annual training. The following Monday, the first day of
23 week three, I did my first solo judge trial.

24

25

13. I also do not have adequate staff. Because we are understaffed and the staff are overworked, I spend time writing and filing my own motions. If we had more staff, the burden of my high caseload would be lessened.

14. I do not have adequate time to prepare for misdemeanor bench trials and often write my questions for cross examination as the witness is testifying on the stand.

Pursuant to § 1-6-105(1)(a), MCA, I declare under penalty of perjury that the foregoing is true and correct.

DONE this 4th day of September, 2013, in Helena, Montana.

Brady Mow Smith